

ADMINISTRATIVE - INTERNAL USE ONLY

FILE 77-4842

DD/A Registry

77-3107

DD/A Registry
File *Personnel*

2 JUN 1977

Executive Registry

77-6203/R

MEMORANDUM FOR: Deputy Director for Administration

**OGC Has
Reviewed**

FROM : F. W. M. Janney
Director of Personnel

SUBJECT : Headquarters Notice Announcing Revision of
Trial Period

REFERENCE : Memo for D/Pers fr DDCI dtd 10 May 77, subject:
Revision of Trial Period

1. Forwarded herewith in response to reference is a proposed Headquarters Notice announcing the change in the employment trial period for all new Agency employees.

2. In lieu of a separate memorandum for each Fitness Report prepared on employees during the three-year trial period, provision is made for a specific comment as the first sentence of the narrative part of the Report, recommending retention or termination. When the recommendation is for termination, or in situations where the employee has not satisfactorily performed the assigned duties but is being given another opportunity to upgrade the performance in the same or a different assignment, a separate memorandum of explanation or justification will accompany the Fitness Report.

[Signature Box]

F. W. M. Janney

STATINTL

Att.

APPROVED

DISAPPROVED

[Signature Box]

8 JUN 1977

Date

Date

Distribution:

- Orig & 2 - Adse (Orig ret to D/Pers)
- 2 - D/Pers
- 1 - OP/RS

ADMINISTRATIVE - INTERNAL USE ONLY

ADMINISTRATIVE - INTERNAL USE ONLY

Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7
This Notice Expires

PERSONNEL

HN-

EXTENSION OF THE TRIAL PERIOD FOR NEW EMPLOYEES

1. Effective 10 May 1977 the trial period for new employees of the Agency was extended from one year to three years. The trial or probationary period has been the subject of a detailed Agency study and it has been determined that one year does not provide an adequate time frame in which to make a reasoned judgment of an employee's abilities and talents. The Agency's tasks and assignments often require lengthy training periods for new employees, making it difficult to obtain meaningful performance evaluation after only 12 months of service. The three-year period will give both the employee and management a more realistic period for assessment of the individual's qualifications.

2. During the first two years of the trial period, involuntary termination of employment may be effected by the Director of Personnel on the recommendation of the Head of the employee's Career Service. During the third year of the trial period, involuntary termination of employment may also be effected by the Director of Personnel; however, the Director of Personnel's decision may be appealed to the Director of Central Intelligence for review.

ADMINISTRATIVE - INTERNAL USE ONLY

Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

3. The career selection process is a vitally important function in the management of the Agency, and it is essential that careful reviews and determinations be made during the trial period that employees do or do not meet Agency suitability standards for continued employment. The effectiveness of this depends on the thoroughness of the evaluation procedures used within each Career Service. Since the Fitness Report system is a key factor in documenting the evaluation of the employee's performance during the trial period, a recommendation, to be included as the first sentence of the narrative part of the Fitness Report, for either continuation of employment or termination, is required before the end of each year of the trial period. When the level of performance is in question, but management has determined that the employee deserves additional time or another assignment to provide the basis for further assessment, a separate memorandum, acknowledged by the employee, must be prepared to accompany the Fitness Report explaining the situation. Recommendations for termination, of course, need not be delayed to coincide with the due date of the Fitness Report but may be made anytime during the trial period.

4. Proposals for termination during the probationary period will be formalized in a memorandum from the Operating Official to the Head of the Career Service for recommendation to the Director of Personnel. Recommendations for termination after the second year of the trial period will include an explanation by the Head of the Career

Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

Service as to the factors that precluded an earlier recommendation for termination. Early resolution must be made of apparent cases of unsuitability or poor performance. Neither the employee nor the Agency benefit by the avoidance or delay of the management responsibility to determine whether new employees should be retained or not.

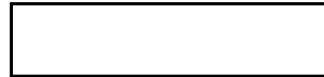
5. To provide for adequate advance notice to employees and time to present appeals, following is the schedule for submission of Fitness Reports during the trial period:

At the end of 12 months of service

At the end of 21 months of service

At the end of 33 months of service

6. Agency regulations concerning this subject will be modified as appropriate to reflect this new policy.



E. H. KROCHE

Deputy Director of Central Intelligence

STATINTL

DISTRIBUTION: ALL EMPLOYEES

22-6203/10

10 May 1977

DD/A Registry
77-2688

MEMORANDUM FOR: Director of Personnel

SUBJECT: Revision in Trial Period

REFERENCE: Your Memorandum to the A/DCI, Dated 15 February 1977
Same Subject

1. I have considered the recommendations contained in the reference as well as responses and comments made by the Deputy Directors of Intelligence, Operations, and Science and Technology. Based upon the Agency's special requirements for lengthy training periods for many new employees, and because our unique missions often make an adequate performance evaluation difficult after only twelve months, I have determined that it is necessary and desirable to extend the probationary period.

2. Our regulations should be revised to reflect the following:

a. Establishment of a probationary period of three years;

(1) During the first two years of this period involuntary termination of employment may be effected by the Director of Personnel in accordance with standards currently applicable. There shall be no appeal.

(2) During the third year involuntary termination may be effected as in (1) above, but the Director of Personnel's decision may be appealed to the Director of Central Intelligence.

b. Fitness Reports and a recommendation for either continuation of employment or termination shall be required before the end of each year of the trial period.

c. Proposals for involuntary termination shall be supported by written statements and shall be accompanied by recommendations or comments of officers from the employee's immediate supervisor through the head of the career service.

d. A preference for early resolution of apparent cases of unsuitability or poor performance. Recommendations for involuntary termination after the second year of the trial period shall include an explanation by the head of the career service of those factors which precluded an earlier recommendation for termination.

STATOTHR

3. Pursuant to the provisions of 5 United States Code Section 302,

[redacted]
[redacted] I hereby delegate to the Director of Personnel the authority of the Director of Central Intelligence as head of the Central Intelligence Agency to effect involuntary terminations of employment during the trial period, as outlined in the preceding paragraph. Any involuntary termination beyond the trial period established herein shall be accomplished only by decision of the Director or the Deputy Director of Central Intelligence.

STATINTL

[redacted]
E. H. Knoche
Deputy Director of Central Intelligence

cc:
D/DCI/IC
D/DCI/NI
DDA
DDO
DDI
DDS&T
IG
GC
LC
Comptroller
D/EEO

STATINTL

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Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

Headquarters Notice Announcing Revision of Trial Period

STATOTHR

John F. Blake
Deputy Director for Administration

DDA 77-3173

6 June 1977

STATOTHR

STATOTHR

Deputy Director of
Central Intelligence

Hank:

While I have approved Fred Janney's memo to me I believe, first, that you should be aware of the matter and, secondly, should sign the proposed Headquarters Notice.

STATOTHR

Deputy Director for
Administration

Incidentally, if we were to require memoranda with all Fitness Reports that would grow to 4500 memoranda in three years--about 1500 new employees each year.

/s/ Jack Blake

John F. Blake

Attachment

Memo dtd 2 Jun 77 to DDA
fr D/Pers, same subj (DDA 77-3107)

Distribution:

Orig RS - DDCI

1 - ER

~~1~~ - DDA Subject w/cy of Att
+ background

1 - DDA Chrono

1 - JFB Chrono

STATINTL

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Next 1 Page(s) In Document Exempt

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ADMINISTRATIVE - INTERNAL USE ONLY

DD/A Registry

77-3107

2 JUN 1977

MEMORANDUM FOR: Deputy Director for Administration

FROM : F. W. M. Janney
Director of Personnel

SUBJECT : Headquarters Notice Announcing Revision of
Trial Period

REFERENCE : Memo for D/Pers fr DDCI dtd 10 May 77, subject:
Revision of Trial Period

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(SIGNED) F. W. M. Janney
F. W. M. Janney

Att.

for John F. White

APPROVED : _____

8 JUN 1977

Date

DISAPPROVED: _____

Date

Distribution:

Orig & 2 - Adse (Orig ret to D/Pers) Chrono, Subject
2 - D/Pers
1 - OP/RS

OP/P&C/RS cmc (1 Jun 77)

ADMINISTRATIVE - INTERNAL USE ONLY

PERSONNEL

HN-

EXTENSION OF THE TRIAL PERIOD FOR NEW EMPLOYEES

1. Effective 10 May 1977 the trial period for new employees of the Agency was extended from one year to three years. The trial or probationary period has been the subject of a detailed Agency study and it has been determined that one year does not provide an adequate time frame in which to make a reasoned judgment of an employee's abilities and talents. The Agency's tasks and assignments often require lengthy training periods for new employees, making it difficult to obtain meaningful performance evaluation after only 12 months of service. The three-year period will give both the employee and management a more realistic period for assessment of the individual's qualifications.

2. During the first two years of the trial period, involuntary termination of employment may be effected by the Director of Personnel on the recommendation of the Head of the employee's Career Service. During the third year of the trial period, involuntary termination of employment may also be effected by the Director of Personnel; however, the Director of Personnel's decision may be appealed to the Director of Central Intelligence for review.

3. The career selection process is a vitally important function in the management of the Agency, and it is essential that careful reviews and determinations be made during the trial period that employees do or do not meet Agency suitability standards for continued employment. The effectiveness of this depends on the thoroughness of the evaluation procedures used within each Career Service. Since the Fitness Report system is a key factor in documenting the evaluation of the employees performance during the trial period, a recommendation, to be included as the first sentence of the narrative part of the Fitness Report, for either continuation of employment or termination, is required before the end of each year of the trial period. When the level of performance is in question, but management has determined that the employee deserves additional time or another assignment to provide the basis for further assessment, a separate memorandum, acknowledged by the employee, must be prepared to accompany the Fitness Report explaining the situation. Recommendations for termination, of course, need not be delayed to coincide with the due date of the Fitness Report but may be made anytime during the trial period.

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Service as to the factors that precluded an earlier recommendation for termination. Early resolution must be made of apparent cases of unsuitability or poor performance. Neither the employee nor the Agency benefit by the avoidance or delay of the management responsibility to determine whether new employees should be retained or not.

5. To provide for adequate advance notice to employees and time to present appeals, following is the schedule for submission of Fitness Reports during the trial period:

At the end of 12 months of service

At the end of 21 months of service

At the end of 33 months of service

6. Agency regulations concerning this subject will be modified as appropriate to reflect this new policy.

151 E. H. Knoche

E. H. Knoche

Deputy Director of Central Intelligence

DISTRIBUTION: ALL EMPLOYEES

22-6203/10

DD/A Registry

77-2688

10 May 1977

MEMORANDUM FOR: Director of Personnel

SUBJECT: Revision in Trial Period

REFERENCE: Your Memorandum to the A/DCI, Dated 15 February 1977
Same Subject

1. I have considered the recommendations contained in the reference as well as responses and comments made by the Deputy Directors of Intelligence, Operations, and Science and Technology. Based upon the Agency's special requirements for lengthy training periods for many new employees, and because our unique missions often make an adequate performance evaluation difficult after only twelve months, I have determined that it is necessary and desirable to extend the probationary period.

2. Our regulations should be revised to reflect the following:
- a. Establishment of a probationary period of three years;

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b. Fitness Reports and a recommendation for either continuation of employment or termination shall be required before the end of each year of the trial period.

c. Proposals for involuntary termination shall be supported by written statements and shall be accompanied by recommendations or comments of officers from the employee's immediate supervisor through the head of the career service.

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STATOTHR

STATOTHR

3. Pursuant to the provisions of 5 United States Code Section 302

[redacted]
[redacted] I hereby delegate to the Director of Personnel the authority of the Director of Central Intelligence as head of the Central Intelligence Agency to effect involuntary terminations of employment during the trial period, as outlined in the preceding paragraph. Any involuntary termination beyond the trial period established herein shall be accomplished only by decision of the Director or the Deputy Director of Central Intelligence.

STATINTL

[redacted]
E. H. Knoche
Deputy Director of Central Intelligence

cc:
D/DCI/IC
D/DCI/NI
DDA
DDO
DDI
DDS&T
IG
GC
LC
Comptroller
D/EEO

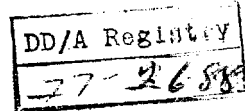
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Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

276203/0

10 May 1977



MEMORANDUM FOR: Director of Personnel

SUBJECT: Revision in Trial Period

REFERENCE: Your Memorandum to the A/DCI, Dated 15 February 1977
Same Subject

1. I have considered the recommendations contained in the reference as well as responses and comments made by the Deputy Directors of Intelligence, Operations, and Science and Technology. Based upon the Agency's special requirements for lengthy training periods for many new employees, and because our unique missions often make an adequate performance evaluation difficult after only twelve months, I have determined that it is necessary and desirable to extend the probationary period.

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STATOTHR
STATOTHR

STATOTHR

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[redacted]

STATOTHR

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STATINTL

[redacted]

L. H. MOCHE
Deputy Director of Central Intelligence

cc:
D/DCI/IC
D/DCI/NI
DDA
DDO
DDI
DDS&T
IG
GC
LC
Comptroller
D/EEO

DD/IO 77-1751

8 MAR 1977

Executive Registry

77-6303/5

MEMORANDUM FOR: Acting Director of Central Intelligence

FROM : William W. Wells
Deputy Director for Operations

SUBJECT : Revision in Trial Period

REFERENCE : Memo for A/DCI through DDA from D/Pers, Same
Subject, dtd 16 Feb 77

1. This memorandum provides comments on the proposals contained in referent memorandum.

2. We reaffirm our interest in extending the probationary employment period for new employees to three years and concur with the Director of Personnel's proposal for a two-phase probationary period retaining the current trial period of 12 months, wherein termination within the first-year would be by the Director of Personnel on the recommendation of the Career Service and review by the Office of Personnel. We agree also-- that there be a requirement for a formal evaluation, in writing, of the employee's suitability before the end of the first year and, again, before the end of the three-year period. A requirement that the Heads of Operating Components make a case in writing for or against retention at the end of the three-year probationary period would be a forward step in our personnel management system and would emphasize the importance we place on supervisory responsibilities toward our new people and the early and thorough assessment of them. STATOTHR

William W. Wells

William W. Wells

cc: D/Pers
DDA

STATINTL

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Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

DD/A Registry
File *Personnel*

DD/A Registry
77-506/1

15 February 1977

MEMORANDUM FOR: Acting Director of Central Intelligence

THROUGH : Deputy Director for Administration *syfb*

FROM : F. W. M. Janney
Director of Personnel

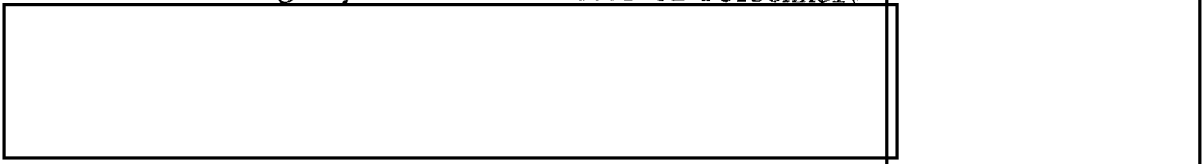
16 FEB 1977

SUBJECT : Revision in Trial Period

1. This memorandum responds to your note concerning a change in the present one-year trial period to a two- or three-year probationary period.

2. The current one-year trial period procedures were established in October 1971 when the Director delegated his termination authority as "head of an Agency" to the Director of Personnel.

STATOTHR



3. Attached to your note was a short memorandum from the Office of General Counsel expressing the opinion that the one-year requirement, which is directed only at the competitive service, does not apply to the Central Intelligence Agency. Since receipt of your note and this short OGC opinion, representatives of the Office of Personnel have had several consultations with the attorney, with the result that additional opinions, dated 2 February and 14 February 1977, have been received.

4. The more recent OGC memorandum reverses in part a 1973 OGC opinion on this subject and concludes that the Director, under his "head of an Agency" authority, is not limited to a 12-month trial period. Instead, he may establish a trial period of any length and he may also delegate his inherent "head of an Agency" termination authority to the Director of Personnel for periods that go beyond 12 months. Moreover, we understand this memorandum to mean that the review and appeal mechanisms provided heretofore only in cases of separation subsequent to the one-year trial period need not be followed when terminating the employment of an individual during any established trial period, whatever its length.

5. The new OGC position now permits the Agency to consider the merits of an extended trial period. We agree that a longer trial period would help solve problems in some components, particularly in the Operations Directorate, where the first year of employment is often devoted to formal or on-the-job training and provides no basis for making a value judgment of an employee's competence or potential. At the same time, however, we see merit in retaining the current trial period. In many instances, the first year of employment provides sufficient experience with an employee for supervisors to make a considered judgment of the individual's suitability for retention, particularly in the negative situations when the performance or conduct are clearly unsatisfactory. It would be wasteful of the Agency's resources and the employee's future to wait an additional period of time to effect termination, when the evidence for such action is available in the first year.

6. We suggest, therefore, that the Agency establish a two-phased probationary period for new employees, which includes the requirement for a formal evaluation in writing of the individual's suitability before the end of the first year and again before the end of the three-year period. Termination within the first 12 months would be by the Director of Personnel, as is now the case, on the recommendation of the Career Service and a review by the Office of Personnel. There would be no appeal. Authority to terminate employees after the first year and before the end of the three-year probationary period for unsatisfactory service also would be delegated to the Director of Personnel, in accordance with the recent OGC opinion; but the affected employee could appeal the decision to the Director. While the new OGC opinion seems to indicate the normal appeal procedures need not be followed if the Director so determines, we recommend they be retained for terminations subsequent to the initial 12 months. In today's atmosphere of openness of administration and concern for employee relations, we believe it would be in the best interest of the Agency to continue to provide an appeals mechanism in cases beyond the first year. The implication to employees of a long probationary or provisional period with simple termination procedures as a basic Agency policy could prove counterproductive to morale.

7. To avoid the ritual approval procedures which developed in the former career provisional program, a program for the three-year period should be formally established. In addition to a Fitness Report, a Career Service evaluation and positive written recommendation for

retention or termination would be required. Termination recommendations would require documentation whether the Agency provides an appeals mechanism or elects simple termination. This formal program should not delay the termination of any employee whose performance or conduct at any point during the probationary period justified such action; in such cases, termination would follow the same procedures established for the one-year or three-year programs as appropriate.

STATOTHR

STATOTHR

STATOTHR

8. The three-year provisional program as proposed here will be a time-consuming evaluation and monitoring system and, to be worth the effort, will require the responsible administration and the concerned support of all supervisors and managers. Every effort must be made to avoid the routine approval procedures which developed in the former career provisional program. Managed with responsibility and judicious concern, it should strengthen our personnel management system.

STATOTHR

F. W. M. Janney

Attachments

Distribution:

Orig - Adse

1 - ER

1 - DDA Chrono. (Subject)

1 - OGC

1 - D/Pers

1 - DD/Pers

1 - OP/Review Staff

STATINTL

DD/Pers bkf (15 Feb 77)

Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

REFERENCE

Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

The Deputy Director
Central Intelligence Agency

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Executive Registry

DD/A Registry

Washington, D. C. 20505

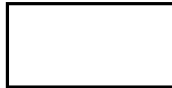
1/19

To DDA

Jack:

In view of this OGC
finding, I think we should
go for a 2- or 3-year
probationary period. Would
be interested in your and
Personnel's suggestions.

STATINTL



Approved For Release 2002/05/20 : CIA-RDP80-00473A000400100013-7

OGC 77-0443

19 January 1977

MEMORANDUM FOR:

FROM:

Office of General Counsel

SUBJECT : Agency Regulations: Probation Periods for
CIA Employees

In response to your question whether there is a statutory requirement that probationary periods for new employees with the Agency be one year, it is the opinion of this Office that the one-year requirement, which is directed only at the competitive service, does not apply to CIA.

STATINTL

OGC OPINIONS

OGC 77-0760

2 February 1977

MEMORANDUM FOR THE RECORD

FROM

[REDACTED]

Office of General Counsel

SUBJECT

: Separation, Suspension, and Reinstatement--
Probationary Period

1. This memorandum concludes that the Director of Central Intelligence may institute a probationary period of greater than one year, and may delegate his authority to terminate the employment of an officer or employee during this period to the Director of Personnel.

2. By earlier memorandum, OGC 77-0443, dated 19 January 1977, I indicated to [REDACTED] that there is no statutory requirement that the probationary or trial period of employment with the Agency be one year. It is clear under 5 U.S.C. §3321 and the implementing Civil Service regulations, 5 CFR 315.802, that the one-year requirement concerns only the competitive service. This is the position of the Civil Service, according to Ms. Tracy Spencer (632-4533), Office of Staffing Services, Bureau of Recruiting and Examinations.

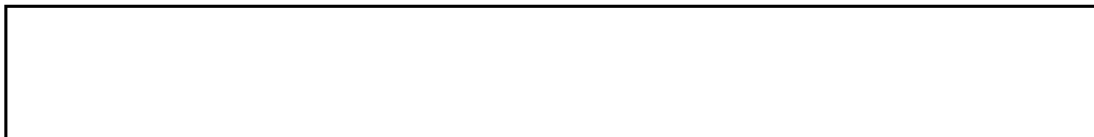
[REDACTED]

3. Subsequent to the writing of that memorandum, [REDACTED] called me to ask what effect this opinion has on the present regulation which permits the Director of Personnel to terminate employment during the probationary period. He wondered whether the delegation of authority for a two-year period is permissible.

4. In a memorandum, dated 10 December 1973, to the Director of Personnel from [REDACTED] his Office discussed two authorities under which the Director of Central Intelligence may terminate employment. First, there is the inherent power of every agency head to remove Government employees.

[REDACTED]

STATOTHR



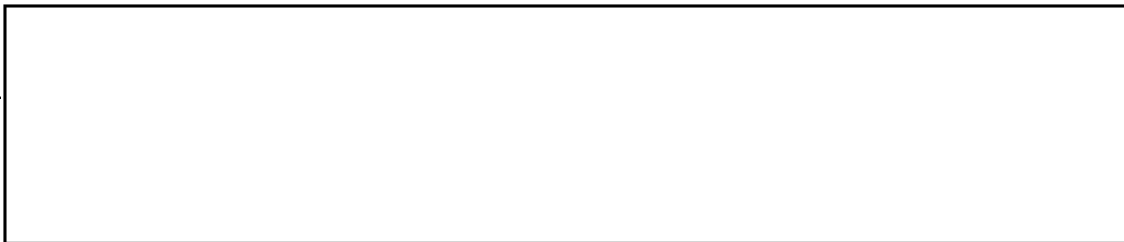
STATINTL

5. The [redacted] memorandum, citing Myers v. United States, 272 U.S. 52 (1926) and the Federal Personnel Manual, Chapter 311-7, subchapter 2, indicated that the power to remove Government employees is inherent in the power to appoint. Further removal authority, however, may be found in 5 U.S.C.A. §302(b), which provides:

In addition to the authority to delegate conferred by other law, the head of an agency may delegate the subordinate officials the authority vested in him--

(a) by law to take final action on matters pertaining to the employment, direction, and general administration of personnel under his agency; and....

STATOTHR



7. If the Director of Personnel may terminate employment during a one-year probationary period, may he do the same during a two-year period? Since the requirement for a one-year period is inapplicable to the excepted service, including CIA, a two-year period may be imposed and, therefore, the Director of Personnel may take jurisdiction in termination cases.

8. The real problem arises, however, because this situation parallels that arising in Born v. Allen, 291 F. 2d 345 (1960). In Born an employee in the excepted service was fired after eighteen (18) months. The probationary period at his agency, USIA, was two years. The Court held that the Civil Service Commission had authority to promulgate regulations which in effect refused to honor probationary periods of over one year for purposes of the Veterans' Preference Act, which grants certain protections to preference eligibles, who by definition have completed a probationary period. 5 U.S.C.A. §7511. Since the Civil

Service at that time required a one-year period for competitive and excepted service, an employee fired after that time would be covered by the Veterans' Preference Act despite the two-year period established by USIA.

9. This does not mean, however, that the Civil Service Commission today limits the probationary period at the Agency to one year for purposes of the Veterans' Preference Act.

STATOTHR

STATOTHR

10. Second, today there are no regulations requiring a one-year probationary period for the excepted service. In fact, the regulations specifically apply only to the competitive service. The provision, 5 CFR 22.102(a), so heavily relied upon by the court in Born has apparently been rescinded. Therefore, the Agency may set its own probationary period, even without resorting to the 102(c) authority.

11.

STATOTHR

STATOTHR

Finally, the regulation at 5 CFR §752.103(b) provides that in no case does this part [Part 752] apply to:

(4) An action taken under...any other statute which authorizes an agency to take an adverse action...without regard to section 7501 of this title or any other statute....

12. I further agree with the earlier opinion of this Office that appears in OGC memorandum 74-1247, dated 23 July 1972 from [redacted] to [redacted] that Rhodes v. United States, 156 Ct. Cl. 31, cert. denied, 371 U.S. 821 (1962), implicitly held the Veterans' Preference Act inapplicable to CIA not only in termination cases under 102(c), but in non-termination cases as well.

STATINTL

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STATOTHR

STATOTHR

13. For the reasons discussed above, it is my opinion that (a) the Director as an agency head has the inherent authority to remove employees, and may delegate that authority, (b) the one-year probationary period required by the Civil Service Commission is inapplicable to CIA, notwithstanding

Born v. Allen, because the relevant regulations have apparently been changed, and (c) the Veterans' Preference Act is in any event inapplicable to CIA. Therefore, the DCI may institute a probationary period that is longer than one year and may delegate his authority to terminate the employment of an officer or employee during this period to the Director of Personnel. It should be noted that, to the extent of any inconsistency with the prior memoranda, supra, this memorandum should prevail.

STATINTL

STATINTL

cc:

OGC 77-0995

14 February 1977

STATINTL

MEMORANDUM FOR:

FROM

:

Office of General Counsel

SUBJECT

: Separation, Suspension, and Reinstatement--
Probationary Period

1. You have asked for an interpretation of Executive Order 11491, sections 3 and 22, in order to determine whether the provisions of section 22 would require the Agency to follow procedures for termination of employment different from those contemplated by your office at this time, and to extend the probationary period to two or three years.

Section 3 specifically excludes the Central Intelligence Agency from the Order's coverage, except section 22. It is the opinion of this Office, however, that the Agency is also exempt from the provisions of section 22; therefore, the opinion stated in OGC Memorandum 77-0760, dated 2 February 1977, is not affected. That memorandum concludes that the Director of Central Intelligence may institute a probationary period of greater than one year, and may delegate his authority to terminate employment during this period to the Director of Personnel.

2. Section 22 provides certain Government employees with a mechanism for appealing decisions in adverse action cases. It extends

...to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under sections 7511-7512 of Title 5.... (Emphasis added).

Since Agency employees are not in the competitive civil service, the provision has no application to CIA, notwithstanding the implication of section 3 to the contrary. (See also, Guide to Central Intelligence Agency Statutes and Laws, Part VII, page 174, September 1970).

3. Further, the provision will not affect your proposal regarding terminations made by the Director of Personnel during an employee's probationary period because section 22 applies only in adverse action cases. Adverse action proceedings concern only the competitive service, only after completion of the probationary period, and only absent a specific statutory exemption. 5 U.S.C. §7501; 5 C.F.R. §752.103. Therefore, even if section 22 were to extend to employees in the excepted service, its coverage would still not include employees in the probationary period or those terminated under a specific statute, e.g., 50 U.S.C. §403(c).

4. In conclusion, section 22 is inapplicable to employees in the competitive service and, therefore, inapplicable to CIA. In view of this opinion and OGC 77-0760, there is no legal objection to increasing the one-year probationary period. The authority to terminate employment during that period may be delegated to the Director of Personnel.

STATINTL



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Remarks:

Termination:

Janney suggests both 1-year and 3-year proba-
tionary period:

1 year with no appeal.

3-year with appeal.

Will ask OGC for decision whether D/Pers may be
delegated termination authority for 3-year period
under Director's 102(c) authority.

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